

## PUBLIC UTILITIES COMMISSION

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June 17, 2003

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: In the Matter of Telephone Number Portability, CC Docket No. 95-116

Dear Ms. Dortch:

The California Public Utilities Commission (CPUC) respectfully requests that the enclosed document entitled "**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND THE PEOPLE OF THE STATE OF CALIFORNIA ON PETITION FOR DECLARATORY RULING OF THE CELLULAR TELECOMMUNICATIONS AND INTERNET ASSOCIATION**" be accepted for late electronic filing in the above docket.

The CPUC attempted to electronically file this document twice on the filing due date of June 13, 2003. We believed we had successfully filed the document based on confirmation sheets received. However, due to internal agency-wide computer system problems, we actually were unsuccessful and just learned today of the computer transmission failure.

We apologize for the computer problems and hereby resubmit the Comments for your consideration. If a formal motion is necessary, please inform us and we will promptly file one.

Thank you for your cooperation and assistance.

Sincerely,

/s/ Laura E. Gasser  
Legal Division

LGX:ngs

Enclosure

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

In the matter of:

CC Docket No. 95-116

Telephone Number Portability

**COMMENTS OF THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND OF  
THE PEOPLE OF THE STATE OF CALIFORNIA  
ON PETITION FOR DECLARATORY RULING OF THE  
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

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June 13, 2003

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The California Public Utilities Commission and the People of the State of California (CPUC or California) submit this response to the Petition for Declaratory Ruling (Petition) of the Cellular Telecommunications & Internet Association (CTIA), filed on May 13, 2003. Although the Petition raises issues the FCC should address, none of these issues should delay the implementation of wireless local number portability (LNP) from occurring in November 2003, and the CPUC strongly opposes any further extension of the implementation deadline.

**I. INTRODUCTION**

CTIA's petition appears to represent yet another attempt by the wireless industry to delay LNP implementation. In the petition, CTIA lists a number of wireless-wireline "issues" and contends the Commission must "resolve" them in order for wireless LNP implementation to go forward in November 2003. While prompt resolution of some of these issues is desirable, the CPUC completely disagrees that timely implementation of wireless LNP cannot occur absent Commission resolution of them. The Commission has granted multiple extensions of

the deadline over the past four and a half years and has made abundantly clear that it will accept no further delays; the public must not be forced to wait even longer than it already has for wireless LNP's competitive benefits to take effect.

## **II. THE COMMISSION'S MANDATE REGARDING THE IMPORTANCE OF TIMELY WIRELESS LNP DEPLOYMENT IS CLEAR**

The Commission has made clear its goal that customers should enjoy the benefits of portability for their wireless telephone numbers. In its most recent LNP order, the Commission stated that:

we continue to view wireless LNP as providing important benefits to consumers. We find that by denying permanent forbearance from the wireless LNP requirements, we ensure that as the wireless industry continues to mature, and wireless subscribers become significantly more invested in their phone numbers, they will be able to experience the benefits of LNP. . .

[Consumers'] inability to take their wireless phone numbers with them is an additional impediment to these consumers switching service providers. Maintaining LNP requirements. . . will eliminate this disincentive to switching among carriers and consumers will be free to choose among carriers based on factors such as price, service, and coverage.<sup>1</sup>

The Commission also emphasized it would tolerate no further delays in LNP deployment. In rejecting an extension longer than one year, the Commission stated:

We decline to permit such a delay in the implementation of wireless LNP. As discussed above, we find that wireless number portability will promote competition by making it easier for consumers to switch carriers to pursue better features, coverage, and prices. *Delay beyond the one year period we*

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<sup>1</sup> *In re: Verizon Wireless's Petition for Partial Forbearance from the Commercial Mobile Radio Services Number Portability Obligation & Telephone Number Portability, Memorandum Opinion & Order*, 17 F.C.C.R. 14972, ¶¶ 18, 22 (July 26, 2002) (Verizon Wireless LNP Order), *dismissed in part and denied in part, CellularTelecommunications & Internet Association v. Federal Communications Commission*, No. 02-1264, 2003 U.S. App. LEXIS 11317 (D.C. Cir. June 6, 2003).

*adopt today could impair the development of competition unnecessarily and harm consumers.*<sup>2</sup>

The wireless industry has not contested the Commission's position. Rather, the wireless industry has admitted repeatedly that no technical impediment exists to prevent (or further delay) LNP implementation. In May 1998, the Local Number Portability Administration Working Group submitted to the North American Numbering Council (NANC) a Report on Wireless Wireline Integration that included a "Wireless Position Paper." In this Wireless Position Paper, the wireless carriers stated that "no technical barrier has been identified which would prevent the full integration of wireless service providers into wireline portability from continuing, on schedule, while the [Wireless Wireline Integration Task Force] develops a solution that would give all telecommunications users the benefits of number portability." As recently as December 2002, CTIA again represented – this time to the United States Court of Appeals for the District of Columbia Circuit – that (1) "once wireless carriers completed network upgrades required by a separate FCC mandate in November 2002, there would be no technical barrier preventing wireless carriers from offering to port in a wireline customers' number" and (2) there would not be "any technical barrier to wireline customers porting their numbers to wireless carriers that are seeking to attract landline customers."<sup>3</sup> In light of the Commission's LNP mandate and the admitted lack of

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<sup>2</sup> *Id.* ¶ 28 (emphasis added).

<sup>3</sup> Brief for Petitioners at 27-28, *CTIA v. FCC*, 2003 U.S. App. LEXIS 11317. In the admitted absence of technical obstacles, wireless carriers' protestations regarding LNP implementation obviously arise from their aversion to competing in a post-LNP market in which lower rates, better service, and increased customer incentives will be necessary to retain and attract customers, as set forth in their filings with the Securities Exchange Commission. *See, e.g.*, AT&T Wireless May 12, 2003 SEC Form 10Q, at 39 ("We anticipate number portability may increase churn by lowering disincentives to switch service providers. We may be required to subsidize product upgrades and/or reduce pricing to match competitors' initiatives (footnote continued to the next page)

technical obstacles, there is no reason wireless LNP implementation cannot and should not proceed as scheduled.

### **III. NONE OF THE PURPORTED ISSUES CONSTITUTES A VALID REASON TO DELAY WIRELESS LNP IMPLEMENTATION**

#### **A. Industry Standards Define Porting Intervals; The Commission Merely Needs To Adopt Those Standards**

CTIA asserts that wireless and wireline carriers are unable to agree on a uniform porting interval and that this alleged uncertainty will “inconvenienc[e] consumers and risk[] public safety.” Petition at 6. Yet CTIA is unable to demonstrate that LNP cannot go forward as scheduled due to this alleged dispute. Industry standards defining wireline porting intervals already exist and have existed since 1998.<sup>4</sup> The industry developed a wireless-wireless porting interval standard of 2.5 hours; the NANC has endorsed that standard and forwarded it to the Commission. All that remains to be done is for the Commission to adopt the NANC recommendation. The CPUC urges the Commission to do so promptly, as carriers electing to deviate from the industry standards and use disparate porting intervals could be customer-affecting.

In industry discussions regarding wireline to wireless porting intervals in and prior to 1998, the wireless industry wanted the wireline industry to reduce the interval it takes

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*(footnote continued from previous page)*

and retain customers, which could adversely impact our revenue and profitability.”); Cingular Wireless March 11, 2003 SEC Form 10K, at 24 (“We believe industry-wide churn will increase with the implementation of wireless number portability.... We expect to incur significant expenses to improve subscriber retention.... We may also be required to subsidize product upgrades and/or reduce pricing to match competitors’ initiatives and to retain customers.”).

<sup>4</sup> The CPUC notes that while the NANC submitted several reports to the Commission from 1998 to 2000 regarding porting intervals (*see* Petition at 8-11), CTIA only just formally raised this issue before the Commission in this Petition. The CTIA’s failure to bring the “issue” to the Commission’s attention sooner suggests that CTIA recognized it is not crucial to LNP implementation.

to port a telephone number from wireline to wireless. Because the wireline industry asserted that it was unable to reduce that wireline-wireline timeframe of 4 working days to the extent the wireless industry desired, the industry standards set at that time used the longer wireline interval. While the wireless industry has made attempts to reduce this interval, the NANC recommended standards remain the same: wireless to wireless ports use an overall 2.5 hour timeframe while all ports involving wireline carriers use an overall 4 business day timeframe. Contrary to CTIA's apparent fear, then, service providers following the industry guidelines should have limited "mixed service" situations, *i.e.* service activation by the new provider of a customer with a ported number prior to that number being disconnected by the previous provider.

Even assuming for the sake of argument that such "mixed service" periods may occur, there is still no unsolvable technical issue regarding E911 implementation that requires the Commission's involvement, as CTIA would have the Commission believe. The Wireless Number Portability Operations Team (WNPO), a NANC working group, recently agreed on a uniform, industry-wide customer education program, whereby individual carriers use a standardized customer education script with porting wireline to wireless customers to alert them to possible porting-related E911 issues. In addition, Sprint PCS recently indicated that it has changed its business procedures to activate the wireless number following the port notification by the Number Portability Administration Center (NPAC), thus avoiding any possible E911 dual-service issues. There appears to be nothing preventing other wireless carriers from making the same alterations to their



procedures.<sup>5</sup> In sum, the duration of porting intervals is not an “unresolved” issue as CTIA describes and LNP implementation can and should go forward as scheduled.

**B. The Applicability Of Interconnection Agreements Is Not An Obstacle To LNP Implementation**

CTIA also argues that the Commission must resolve the wireless and wireline carriers’ disagreement over the applicability of interconnection agreements to wireless LNP. Petition at 16-23. Again, CTIA has not shown that this dispute prevents LNP implementation from going forward as scheduled.

While the CPUC generally agrees that interconnection agreements pursuant to sections 251 and 252 of the Telecommunications Act of 1996 are not strictly necessary for wireless LNP, CTIA’s claim that the Commission must take some sort of action is overstated. Interconnection agreements between wireless and wireline carriers already exist pursuant to sections 251 and 252 of the Telecommunications Act of 1996 as a requirement for pooling. As such, they are nothing new to wireless carriers; indeed, most if not all of wireless carriers already have existing interconnection agreements with the incumbent local exchange carriers (ILECs). Thus, there is no need to delay the LNP deadline to resolve whether such agreements are “necessary” or not.

That being said, the CPUC agrees with CTIA that the FCC regulates CMRS number portability under the general authority of section 332, rather than under sections

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<sup>5</sup> The Commission has expressed its confidence that the wireless carriers have been and continue to be able to comply with the E911 program. In refusing to extend the LNP deadline even further, the Commission stated: “We are not persuaded by arguments that a longer extension of the LNP implementation deadline is necessary to allow wireless carriers to focus on compliance with other regulatory requirements. Wireless carriers have in fact already received extensions of time to develop and implement technology associated with E911. . . .” Verizon Wireless LNP Order, ¶ 30. The Commission also recently reported to Congress that the E911 program is proceeding on schedule.

251 and 252. CMRS-LEC number portability issues may be affected by sections 251 and 252 interconnection agreements as CTIA contends. The CPUC agrees with the CTIA that the Commission “is free to establish procedures governing the terms under which LECs engage in number portability.” CTIA Petition at 20. Proceeding from that, the Commission has authority to determine whether CTIA’s proposal that “[n]othing more than the SLA is necessary to ensure that customers can port their numbers” is desirable *public policy*. *Id.*

**C. The Remaining “Issues” CTIA Presents Also Should Not Effect On LNP Deployment**

CTIA contends the Commission must resolve several additional “unresolved issues” before LNP implementation can occur, all of which are actually irrelevant to LNP deployment:

**1. Sprint petition regarding the routing and rating of traffic by ILECs**

This petition raises an issue largely related to compensation, much like the rate center disparity issue. Thus, WNP implementation is not dependent on its resolution.

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## 2. Portability treatment of Type 1 interconnections

The industry has developed processes for porting Type 1 numbers, via the Type One Task Organization, in which many CTIA members participate. According to the agreed-upon procedure, the new service provider will send a Local Service Request to the old wireline service provider; the old wireline service provider will return a confirming Local Service Request to the new service provider; the new service provider and the old wireline service provider will complete NPAC communications as appropriate; and after activation of the port, the old wireline service provider will send a loss notification to the old wireless service provider. Moreover, it is unlikely that a wireline service provider will be involved in the porting of a wireless user with a Type 1 number; the wireless service provider will most likely port the number to itself before November 23, 2003.

## 3. Bona fide request requirement

CTIA correctly states that the Commission sought comment in 2002 on whether it should again extend the LNP requirements to all carriers in the largest MSAs, regardless of whether they receive a request to provide LNP. This matter, however, does not stand in the way of LNP implementation. Not only is it currently before the Commission, but by February 2003 many major carriers had confirmed their filing of bona fide requests.

## 4. Wireless markets covered by the LNP mandate

Contrary to CTIA's characterization otherwise, there is no issue regarding "how to define the top 100 [metropolitan statistical areas] MSAs." Rather, in the Third Report and Order in the Numbering Resource Optimization docket (CC 99-200), the

Commission clarified that LNP requirements extend to all carriers in the largest 100 MSAs and these “top 100 MSAs” include those identified in the 1990 U.S. Census plus all subsequent updates, including the new combined MSAs per the 2000 U.S. Census and additional new MSAs on the top 100 MSA list.<sup>6</sup> This ruling stands today. While the Commission issued a Notice of Proposed Rulemaking seeking comment on the addition of the Consolidated MSAs to the list of top 100 MSAs, it did not reverse its earlier decision in the Third NRO Order; indeed, wireless number pooling was implemented throughout the Consolidated MSAs based on the Third NRO Order.

#### 5. Nationwide roaming requirement on rural and small carriers

Finally, no Commission action is necessary to “clarify” the nationwide roaming requirement on rural and small carriers in order for LNP implementation to occur. With the implementation of number pooling in November 2002, all wireless carriers were required to continue their support of nationwide roaming by implementing an industry standard called Mobile Identification Number/Mobile Directory Number (MIN/MDN) separation. Thus, all carriers, including rural and small carriers, are supposed to have the MIN/MDN separation technology in place; the Commission is addressing the requests for waiver of the MIN/MDN requirement in separate proceedings. The CPUC has not been involved in these proceedings, but contends that the disposition of those requests should not, and must not, interfere with timely implementation of WNP. The CPUC also supports ubiquitous availability of nationwide

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<sup>6</sup> See *In re: Numbering Resource Optimization, Third Report & Order & Second Order on Reconsideration in CC Docket No. 96-98 & CC Docket No. 99-200*, 17 F.C.C.R. 252, ¶¶ 124, 127 (2001) (Third NRO Order).

roaming. Carving out “checkerboards” of areas where roaming is not supported would be deleterious to both consumers and competition.

#### **IV. CONCLUSION**

The CPUC adamantly opposes any further delay in the wireless LNP implementation deadline of November 23, 2003. As shown above, none of the “issues” CTIA raises in its Petition poses an obstacle to on-schedule LNP implementation.

Respectfully submitted,

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By: /s/ LAURA E. GASSER

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